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4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**  
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7 PENN ENGINEERING &  
8 MANUFACTURING CORP.,

9 Plaintiff,

10 vs.

11 DONGGUAN FENGGANG PINCONN  
12 HARDWARE FACTORY,

13 Defendant.

2:17-cv-02679-RJC-PAL

**ORDER**

14 This case arises from allegations of trademark and patent infringement. Now pending  
15 before the Court is a motion for default judgment against Defendant Dongguan Fenggang  
16 Pinconn Hardware Factory (“Pinconn”). (Mot. Default J., ECF No. 12.) For the reasons given  
17 herein, the Court grants the motion.

18 **I. FACTS AND PROCEDURAL HISTORY**

19 Plaintiff Penn Engineering & Manufacturing Corp. (“PEM”) is a 75-year-old company  
20 specializing in the design, manufacture, and sale of metal fasteners. PEM is the owner of  
21 numerous trademarks and patents in relation to its business, including many registered marks  
22 which derive directly from the acronym “PEM” (e.g., PEMFLEX, PEMHEX, PEMSERT, etc.).  
23 (Compl. 6–12, ECF No. 1; Mot. Default J. 2–5, ECF No. 12.) In November 2015, PEM filed a  
24 trademark and patent infringement action in federal court in the Eastern District of Pennsylvania,

1 against three Chinese entities: Pemco Hardware, Inc., Dongguan Fenggang Pemco Hardware  
2 Factory, and Shenzhen Pemco Fastening Systems Co., Ltd. (“the Pennsylvania Action”). *See*  
3 *Penn Eng’g & Mfg. Corp. v. Pemco Hardware, Inc.*, No. 2:15-cv-6277-GJP (E.D. Pa. filed Nov.  
4 23, 2015). On February 19, 2016, the clerk of court entered default against all three defendants  
5 for their failure to appear, plead, or otherwise defend in the case.

6 On March 9, 2016, the Pennsylvania court granted a preliminary injunction against the  
7 Pemco defendants ordering them to discontinue their infringing activities. Thereafter, according  
8 to PEM, the defendants “shut down their website, closed their California warehouse, and  
9 seemingly disappeared from U.S. commerce.” Mot. Enforce Prelim. Injun. at 2, *Penn Eng’g v.*  
10 *Pemco*, No. 2:15-cv-6277-GJP (E.D. Pa. Nov. 6, 2017), ECF No. 18-1. However, on or around  
11 October 13, 2017, PEM discovered that “the defendants had re-surfaced and resumed their  
12 infringing activities under a new tradename and new trademarks, namely, Pinconn, Pinconn  
13 Hardware Factory, and Dongguan Fenggang Pinconn Hardware Factory (collectively “Pinconn”)  
14 . . . .” *Id.* Then, on October 18, Pinconn participated as an exhibiting vendor at the Las Vegas  
15 International Fasteners Expo. PEM served a copy of the complaint in the instant action on  
16 Pinconn at its trade show booth. Also, PEM’s counsel hand-delivered a copy of the Pennsylvania  
17 court’s preliminary injunction order, and “informed and explained to Pinconn how it was bound  
18 by, but in violation of, the PI Order.”<sup>1</sup> *Id.* at 3. Counsel also observed and photographed samples  
19 of products distributed by Pinconn and evidence that those products infringe PEM’s trademarks.

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22 1 PEM had previously attempted to amend the preliminary injunction order specifically to  
23 prevent Pinconn’s participation in the Las Vegas expo. In denying that request, the Pennsylvania  
24 court indicated that the existing order was already broad enough to reach Pinconn’s activities:  
“To the extent Pinconn is a related company acting in concert with Pemco, the March 9 Order  
would prohibit Pinconn from violating Plaintiff’s trademarks or patents, or operating any  
associated website in violation of that order.”

1 Subsequently, PEM discovered that Pinconn was registered to appear at another trade  
2 show in Minneapolis on November 8 and 9, 2017. With that knowledge, PEM petitioned the  
3 Pennsylvania court for further relief. On November 7, the court granted an emergency motion to  
4 enforce the preliminary injunction order against Pinconn, holding the Pinconn defendants in  
5 contempt of court. Mem. Op., *Penn Eng'g v. Pemco*, No. 2:15-cv-6277-GJP (E.D. Pa. Nov. 7,  
6 2017), ECF No. 21. In its order, the court held:

7 Pinconn is in contempt of the Court's March 9, 2016 Preliminary Injunction  
8 Order. That Order was validly issued by this Court, and Pinconn knew of it.  
9 Counsel stated that he previously emailed to Pinconn a copy of the Preliminary  
10 Injunction at julia@pinconn.com and pemco@163.com, and gave copies of the  
11 Order and all previously-filed pleadings from this case to Ms. Li at the IFE trade  
show. Based on the evidence provided, it is clear that Pinconn is the same entity  
as Pemco under a different name or is acting in concert with Pemco. Pinconn's  
conduct violates the Preliminary Injunction.

12 During the preceding events, upon learning of Pinconn's participation in the Las Vegas  
13 trade show, PEM filed the instant action in the District of Nevada. (Compl., ECF No. 1.) On  
14 November 14, 2017, the Clerk of Court entered default against Pinconn. (Clerk's Entry of  
15 Default, ECF No. 10.) PEM now moves the Court for a default judgment, including a permanent  
16 injunction and an award of statutory damages. (Mot. Default, ECF No. 12.)

## 17 **II. LEGAL STANDARDS**

18 Obtaining default judgment is a two-step process under Rule 55. *Eitel v. McCool*, 782  
19 F.2d 1470, 1471 (9th Cir. 1986). First, the clerk must enter a party's default. FED. R. CIV. P.  
20 55(a). The party seeking the default must then petition the court for a default judgment. *Id.* at  
21 55(b)(2). "A grant or denial of a motion for the entry of default judgment is within the discretion  
22 of the court." *Lau Ah Yew v. Dulles*, 236 F.2d 415, 416 (9th Cir. 1956). A court may, "for good  
23 cause shown," set aside an entry of default. *See McMillen v. J.C. Penney Co.*, 205 F.R.D. 557,  
24 558 (D. Nev. 2002). Default judgments are generally disfavored, so courts should attempt to

1 resolve motions for default judgment to encourage a decision on the merits. *See id.* (citing *TCI*  
2 *Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001)).

3 In order for a court to determine whether to “exercise its discretion to enter a default  
4 [judgment],” the court should consider seven factors:

5 (1) the possibility of prejudice to the plaintiff, (2) the merits of the plaintiff’s  
6 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at  
7 stake in the action, (5) the possibility of a dispute concerning material facts, (6)  
whether the default was due to excusable neglect, and (7) the strong policy  
underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

8 *Id.* (citing *Eitel*, 782 F.2d at 1471–72). “In applying this discretionary standard, default  
9 judgments are more often granted than denied.” *PepsiCo v. Triunfo-Mex, Inc.*, 189 F. R. D. 431,  
10 432 (C. D. Cal. 1999). Upon entry of default, all well-pled facts in the complaint are taken as  
11 true, except those relating to the amount of damages. *TeleVideo Sys. , Inc. v. Heidenthal*, 826 F.  
12 2d 915, 917–18 (9th Cir. 1987).

### 13 **III. ANALYSIS**

14 The Court will grant the motion and enter a default judgment against Pinconn. The  
15 complaint is sufficient, and if the allegations are true, it is highly likely that Pinconn has  
16 infringed and will continue to infringe PEM’s marks and patents in the absence of a considerable  
17 deterrent. Although a preliminary injunction order in the Eastern District of Pennsylvania  
18 currently protects PEM’s interests, Pinconn has already shown a willingness to violate that order  
19 and has been held in contempt of it. There is also no indication that Pinconn’s default was due to  
20 excusable neglect. Furthermore, a judgment will provide finality to these proceedings, permitting  
21 PEM to conclude the litigation of this case and forcing Pinconn to appeal or forfeit the cause.

22 Under the fourth *Eitel* factor, “the court must consider the amount of money at stake in  
23 relation to the seriousness of Defendant’s conduct.” *PepsiCo, Inc. v. California Sec. Cans*, 238 F.  
24 Supp. 2d 1172, 1176 (C.D. Cal. 2002). PEM seeks relief in two forms: a permanent injunction

1 and statutory damages in the amount of \$14 million. With respect to the first form, the Ninth  
2 Circuit has opined that “[i]njunctive relief is the remedy of choice for trademark and unfair  
3 competition cases, since there is no adequate remedy at law for the injury caused by defendant’s  
4 continuing infringement.” *Century 21 Real Estate Corp. v. Sandlin*, 846 F. 2d 1175, 1180 (9th  
5 Cir. 1988). Moreover, Pinconn’s efforts to evade the Pennsylvania court’s preliminary injunction  
6 order by changing its tradenames and domain name, as well as its continued presence at trade  
7 shows notwithstanding the injunction, suggest a high likelihood that Pinconn will persist in its  
8 infringing activities in the future. Thus, a permanent injunction is warranted.

9         With respect to the request for statutory damages, \$14 million is a large sum of money  
10 which, on its face, would tend to weigh against granting a default judgment. The amount PEM  
11 seeks is based on the maximum statutory damages available for the alleged willful counterfeiting  
12 of seven marks per type of goods sold. *See* 15 U.S.C. § 1117(c) (where plaintiff elects to recover  
13 statutory damages, and “if the court finds that the use of the counterfeit mark was willful,” the  
14 court may award “not more than \$2,000,000 per counterfeit mark per type of goods or services  
15 sold, offered for sale, or distributed, as the court considers just”). PEM justifies its request by  
16 pointing to Pinconn’s refusal to participate in this case and the egregious nature of the  
17 counterfeiting. The Court agrees. First, because Pinconn has declined to appear or defend in this  
18 action, PEM is unable to discover the precise extent of Pinconn’s infringing activities and thus  
19 cannot accurately calculate its actual damages. *See Microsoft Corp. v. Nop*, 549 F. Supp. 2d  
20 1233, 1238 (E.D. Cal. 2008) (stating that “statutory damages are appropriate in default judgment  
21 cases because the information needed to prove actual damages is within the infringers’ control  
22 and is not disclosed”). Also, PEM has presented persuasive evidence of willful counterfeiting,  
23 including, as noted above, Pinconn’s active evasion and continued violation of the Pennsylvania  
24 court’s preliminary injunction order. Pinconn’s persistent counterfeiting despite a federal court

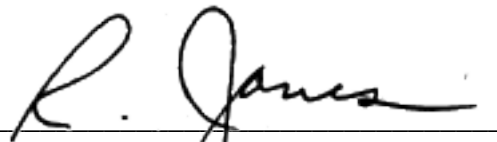
1 injunction strongly indicates that a significant deterrent is necessary to stem future infringement.  
2 For these reasons, the Court finds an award of the maximum statutory damages is appropriate.

3 Therefore, the Court will grant the motion in its entirety.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the motion for default judgment (ECF No. 12) is  
6 GRANTED. PEM shall have thirty days from this order's entry to file a proposed permanent  
7 injunction order for the Court's review and approval.

8 IT IS SO ORDERED.

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11 ROBERT C. JONES  
12 United States District Judge  
13 June 13, 2018  
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